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**Attorney for Defendant,
ZIAULLAH LALLI**

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiffs,

vs.

ZIAULLAH LALLI

Defendant.

CASE NO: CR 07-276-JFW

DEFENDANT'S STATEMENT OF
POSITION REGARDING DEFENDANT'S
SENTENCE

Sentencing Hearing:
November 30, 2009 at 1:15 p.m.
Place: Honorable Judge Walter

Pursuant to Federal Rule of Criminal Procedure, Defendant, Ziaullah Lalli, by and through his attorney of record, Fred G. Minassian, hereby files its Position Statement Regarding The Defendant's Sentence.

Said position is based upon the attached memorandum of points and authorities, the PSR submitted by the USPO, any other evidence or argument presented at defendant's sentencing hearing, and the record in this case.

DATED: November 20, 2009

Respectfully submitted,

/s/
FRED G. MINASSIAN, ESQ.
Attorney for Defendant

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I.**

3 **CASE BACKGROUND**

4 On December 3, 2007, defendant pled guilty to count 1 of the indictment filed on June
5 2006 to a violation of 21 U.S.C. § 846, 841 (a)(1) Conspiracy to possess with intent to distribute
6 and to distribute cocaine beginning on or about May 6, 2002. Defendant Lalli and co-defendant
7 Wardak, conspired to possess with intent to distribute more than 500 grams of a mixture
8 containing cocaine.

9 The PSR determined that defendant's sentence based on considering both the sentencing
10 factors enumerated at 18 U.S.C. § 3553 (a) and the advisory guideline range of sixty to seventy-
11 one months, which is based upon an offense level of twenty-three and a criminal history category
12 of III, the probation officers recommended the term of sixty months. Further, the supplemental
13 pre-sentence report regarding Mr. Lalli's criminal history adjustment has not yet been received.

14 **II.**

15 **THE SENTENCING FACTORS SET FORTH IN 18 U.S.C. § 3553(a)**

16 **SUPPORT THE DEFENDANT'S RECOMMENDED SENTENCE**

17 The Federal Sentencing Act¹ "requires a sentencing court to consider the Guidelines'
18 ranges, but it permits the court to tailor the sentence in light of other statutory concerns as
19 well" United States v. Booker, 125 S.Ct 738, 757 (citations omitted). Section 3553(a)
20 provides that the Court shall consider the nature of the circumstances of the offense and the
21 history and characteristics of the defendant. Section 3553(a)(2) further provides that the Court
22 shall also consider the need for the sentence to be imposed. Among the factors to be considered
23 are the need to reflect the seriousness of the offense, to promote respect for the law, to provide
24 just punishment for the offense, and to afford adequate deterrence to criminal conduct.

25 Further pursuant to Gall v. U.S. 2007 U.S. Lexus 13083 the guideline is a starting point

26 _____
27 1 See Sentencing Reform Act of 1984, as amended, 18 U.S.C. § 3551, et seq., 28 U.S.C. § 991,
28 et seq.

1 and the initial bench mark, and may not be the only consideration, and District Court Judges
2 should follow all of the 3553 (a) factors to determine the sentence requested by a party.

3 **III.**

4 **GOVERNMENTS 5K POSITION**

5 The government will propose a 6 level downward departure from an offense level 23 to
6 an offense level 17 with the guideline range of 24-37 months; 27-33 months, and 30-37 months,
7 due to Mr. Lalli's substantial cooperation.

8 **IV.**

9 **SUBSTANTIAL ASSISTANCE U.S.S.G. § 5K1.1**

10 Upon motion of the government stating that the defendant has provided substantial
11 assistance in the investigation or prosecution of another person who has committed an offense,
12 the court may depart from guidelines.

13 (a) The appropriate reduction shall be determined by the court for reasons stated that may
14 include, but not limited to, consideration of the following sentence the defendant
15 mandatory minimum.

- 16 1. The court's evaluation of the significance and usefulness of the defendant's
17 assistance, taking into consideration the government's evaluation of the assistance
18 rendered;
- 19 2. The truthfulness, completeness, and reliability of any information or testimony
20 provided by the defendant;
- 21 3. The nature and extent of the defendant's assistance;
- 22 4. Any injury suffered, or any danger or risk of injury to the defendant or his
23 family resulting from his assistance;
- 24 5. The timeliness of the defendant's assistance.

25 Also, District Court is not authorized to sentence below a statutory mandatory minimum
26 unless the government motion certifies a defendant's substantial assistance and requests a
27 departure, pursuant to 18U.S.C. section 3553(e). Melendez v. United States, 518 U.S. 120 1996.

28 In this case the government will make a request for a departure pursuant to 18 U.S.C.

1 Section 3553(e) and based on said request the court does have the authority to sentence the
2 defendant below the statutory mandatory minimum.

3 The defendant upon his agreement with the government has made all efforts to truthfully
4 assist the appropriate authorities in the investigation and prosecution of individuals involved in
5 illegal activities. Even at times placing himself in danger in order to accomplish his promise to
6 the government.

7 **V.**

8 **POST OFFENSE REHABILITATION & REMORSE**

9 Under United States v. Brock, 108 F.3d31 post offense rehabilitation is a proper ground
10 for downward departure.

11 In this case Mr. Lalli's substantial cooperation with the government was a genuine effort
12 on his part to eradicate crime. As such, said conduct and the unconditional assistance clearly
13 shows the defendant's willingness to stay away from a life of crime and more importantly show
14 remorse for even attempting to be involved in a life of crime. [See attached exhibit "A" Mr.
15 Lalli's letter to the court.]

16 Mr. Lalli's conduct is analogous to a co-conspirator not only withdrawing from the
17 conspiracy but also taking affirmative steps to thwart the conspiracy. Thus, Mr. Lalli's
18 cooperation fully demonstrates his rehabilitation away from life of crime.

19 **VI.**

20 **ADEQUACY OF CRIMINAL HISTORY CATEGORY U.S.S.G § 4A1.3**

21 If reliable information indicates that the criminal history category does not adequately
22 reflect the seriousness of the defendant's past criminal conduct or the likelihood that the
23 defendant will commit other crimes, the court may consider imposing a sentence departing from
24 the otherwise applicable guideline range.

25 Mr. Lalli's supplemental pre-sentence report regarding his criminal category was not
26 available by the time this memorandum was prepared. Mr. Lalli has moved to expunge all of his
27 prior convictions. [See attached exhibit "B"] set forth below: